

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN SECTION**

**RIVERFRONT DEVELOPMENT, INC.,
As Managing Agent of Mud Island, and
On Behalf of THE CITY OF MEMPHIS,
Owner of Mud Island,**

Plaintiff,

v.

No.: 2:16-cv-2553

WEPFER MARINE, INC.,

Defendant.

**PLAINTIFF’S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, the Plaintiff, Riverfront Development, Inc., as Managing Agent of Mud Island, and on Behalf of the City of Memphis, Owner of Mud Island (hereinafter “RDC” or “Plaintiff”), and submits this Statement of Undisputed Material Facts in support of Plaintiff’s Motion for Summary Judgment against Defendant, Wepfer Marine, Inc. (hereinafter “Wepfer” or “Defendant”), as follows:

1. At all relevant times, the City of Memphis has owned and developed Mud Island.¹
2. At all relevant times, the City of Memphis’ sole and exclusive purpose for Mud Island is as park land, set aside for the use and benefit of the public.²

¹ Declaration of Douglas McGowen, COO, para. 3 (attached hereto as “**EXHIBIT A**”).

² Declaration of D. McGowen, para. 5, 6.

3. At all relevant times, no known market has existed for the City of Memphis' sale of Mud Island, which has only been used historically as public park land.³

4. At all relevant times, the City of Memphis retained RDC as the City of Memphis' operating agent to manage its riverfront properties, including Mud Island.⁴

6. At all relevant times, Wepfer owned and operated the M/V LUCY WEPFER.⁵

8. At approximately 2:45 p.m., on July 6, 2015, Captain Jared LaFrance was piloting the M/V LUCY WEPFER southbound through the mouth of the Wolf River towards its intersection with the Mississippi River, located between the riverfront of downtown Memphis and the southern portion of the Mud Island peninsula.⁶

9. At approximately 2:45 p.m., on July 6, 2015, Capt. LaFrance grounded the LUCY WEPFER on the southern portion of the Mud Island peninsula.⁷

10. On July 6, 2015, in addition to Capt. LaFrance, three (3) other individuals employed by Wepfer as deckhands were also aboard the LUCY WEPFER.⁸

11. Both prior to and approximately at 2:45 p.m., on July 6, 2015, all three (3) Wepfer deckhands were inside the LUCY WEPFER galley and did not witness the grounding.⁹

³ Declaration of D. McGowen, para. 7.

⁴ Deposition of Benny O. Lendermon, III (May 31, 2017), pg. 6:22-25 through 8:1-14 (relevant portions attached hereto as "**EXHIBIT B**"); see also Exhibit 2 to the Deposition of Jim Reeder (May 24, 2017) (relevant portions attached hereto as "**EXHIBIT C**").

⁵ See Defendant's Answer, para. 17, admitting allegation contained in paragraph 17 of Plaintiff's Original Complaint. "At all times relevant hereto, Defendant Wepfer was the owner and operator of the subject vessel, LUCY WEPFER." (relevant portions attached hereto as "**EXHIBIT D**").

⁶ Deposition of Gerald Arlen "Trey" Bloom, III (May 23, 2017), pg. 18:18-25 through 19:1 (relevant portions attached hereto as "**EXHIBIT E**"); see also Deposition of John Timothy Steele (May 23, 2017), pg. 15:2-9 (relevant portions attached hereto as "**EXHIBIT F**").

⁷ Depo. Gerald Bloom, pg. 21:7-11.

⁸ Depo. Gerald Bloom, pg. 20:14-21; Depo. John Steele, pg. 12:2-4.

⁹ Depo. Gerald Bloom, pg. 21:17-24 through 22:1-15, 25:8-17, 37:4-16; Depo. John Steele, pg. 15:21-24 through 16:1-9, 27:5-12.

12. Wepfer was unable to manually remove the LUCY WEPFER from its grounding on Mud Island on July 6, 2015, even with the assistance of another vessel owned by Wepfer, named the M/V RICKY ROBINSON.¹⁰

14. After the successful removal of the LUCY WEPFER, two (2) large holes were revealed to have been gouged out of the land on Mud Island where the LUCY WEPFER was grounded.¹¹

15. At all relevant times, Jim Reeder was an engineer and was employed as a Project Development Manager with RDC.¹²

16. Within a month of the grounding of the LUCY WEPFER, Mr. Reeder photographed and measured the holes gouged out of the Mud Island by the LUCY WEPFER, concluding that 12,000 cubic yards of land was gouged out of Mud Island.¹³

17. Mr. Reeder provided his measurements to Luhr Bros., Inc., requesting a quote of the costs of materials needed to repair the damage to Mud Island.¹⁴

18. Luhr Bros., Inc. provided RDC with two (2) quotes to repair the damage to Mud Island caused by the LUCY WEPFER, to wit: \$444,000 for Luhr Bros., Inc. to provide the materials and the labor, or \$522,000 for Luhr Bros., Inc. to obtain the materials from a local source but provide the labor.¹⁵

¹⁰ *Depo. John Steele*, pg. 21:14-23 through 23:1-20; *Depo. Gerald Bloom*, pg. 30:23 through 31:1-5.

¹¹ See Exhibit 8T to *Depo. Jim Reeder* (attached hereto as "**EXHIBIT G**").

¹² *Depo. Jim Reeder*, pg. 5:6-10, 10:9-12, 67:8-13 (relevant portions attached hereto as "**EXHIBIT H**").

¹³ *Depo. Jim Reeder*, pg. 15:11-25 through 16:1-14, 17:15-25 through 18:1-7, 39:19-25 through 52:1-2.

¹⁴ *Depo. Jim Reeder*, pg. 19:12-14.

¹⁵ *Affidavit of William Gardner*, para. 5, 6 (attached hereto as "**EXHIBIT I**").

Respectfully submitted,

/s/ Robert L. J. Spence, Jr.
ROBERT L. J. SPENCE, JR. (BPR #12256)
ANDREW M. HORVATH (BPR #33862)
The Spence Law Firm, PLLC
80 Monroe Avenue
Garden Suite One
Memphis, Tennessee 38103
901-312-9160

J. MICHAEL FLETCHER (BPR #6954)
125 N. Main Street, Room 336
Memphis, Tennessee 38103
901-636-6614

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically filed with the Clerk of the Clerk via the ECF System, which forwarded electronic notification of the filing to the following:

Frank J. Dantone, Esq.
Henderson Dantone, P.A.
241 Main Street
P.O. Box 778
Greenville, MS 38702-0778

Larry Montgomery, Esq.
Glankler Brown
6000 Poplar Ave., Suite 400
Memphis, Tennessee 38119

Attorneys for Defendant

this 25th day of September, 2017.

/s/ Robert L. J. Spence, Jr.